



Beyond the Hippocratic Oath: Navigating the legal labyrinth of medicine- A case study in Nigeria

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Abstract

The Hippocratic Oath, a foundational pillar of medical ethics, has long guided physicians in their commitment to patient care. However, the contemporary healthcare landscape, characterized by technological advancements, economic pressures, and complex legal frameworks, poses significant challenges to these traditional ethical principles. This study delves into the intricate legal landscape that physicians must navigate, where the pursuit of beneficence, non-maleficence, and confidentiality is increasingly influenced by malpractice concerns, regulatory compliance, and a plethora of lawsuits. Through a comprehensive analysis of legal cases and ethical guidelines, this research highlights the tension between timeless medical ethics and modern legal realities. The study also explores the implications of these legal complexities on the doctor-patient relationship and the broader healthcare system. Ultimately, this research underscores the need for a nuanced approach to medical ethics that balances the enduring principles of the Hippocratic Oath with the evolving legal environment of modern healthcare. By shedding light on these critical issues, this study aims to contribute to the ongoing dialogue about how medical professionals can uphold ethical standards while navigating the legal labyrinth of contemporary medicine.

Keywords: Health, Hippocratic Oath, medicine, legal complexities, case study, Nigeria

Introduction

Medicine has various definitions. It is an umbrella term for one of the most important systems involved in a state. The healthcare system. The MedicalNewsToday editorial team described it as the field of health and healing. It includes nurses, doctors, and various specialists. It covers diagnosis, treatment, and prevention of disease, medical research, and many other aspects of health. The World Health Organization defines a health care system to consist of all organizations, people and actions whose primary intent is to promote, restore or maintain health.

In Medical care, two persons are involved, the medical practitioner and the patient. The relationship between health practitioners and their clients is central to the practice of healthcare as well as essential to the delivery of quality diagnosis and treatment of diseases. It forms one of the foundations of modern-day healthcare ethics. The relationship between health practitioners and patients is one of ethical value. The patient is an important stakeholder in all forms of healthcare and that his/her relationship with a medical practitioner should be considered as a fiduciary one (a legal or ethical relationship of trust between two or more parties)^[1]

The medical services sector is one of the most critical for Nigeria's economic and social development. Medical service is significant and delicate because it directly affects human lives. Providers of medical services are required under the relevant laws to undergo professional training for a requisite period because of the uniqueness of this service. Every citizen of Nigeria is a potential user of medical service at one point or the other. Medical accidents account for one of the globally acknowledged causes of death. Many of the victims do not live to tell the story. The need to protect the end users of medical services is unarguable.^[2]

1. Background on The Hippocratic Oath

It is a contract more than two thousand years old although it has evolved over the millennia, it is perhaps more sacred

now than ever, one modern version of the Oath reads in part;

"I will remember that there is art to medicine as well as science, and that warmth, sympathy and understanding may outweigh the surgeon's knife or the chemist's drug."

The Hippocratic Oath is traditionally administered to young physicians upon entering the profession. Hippocrates, the Greek physician called the Father of Medicine, lived from about 460 B.C to 377 B.C. He placed medicine on a scientific foundation, freeing it from superstition, philosophy and religious rites, gave sound and shrewd descriptions of many diseases and raised the ethical standards of medical practice.

Like modern codes of medical ethics, the classical Hippocratic Oath included a pledge to practice medicine to the best of the individual's ability and judgement. Since the 20th Century, many updated versions of the Hippocratic Oath have been published. Widely known modern versions include the Declaration of Geneva, adopted by the World Medical Association in 1948, another well known version is the 1964 oath written by Louis Lasagna. The overarching theme of the Hippocratic Oath and of its modern descendants is the idea that the individual reciting the pledge is making a personal dedication to ethical and committed care.^[3]

Another key theme that the Hippocratic Oath and the modern version share is the idea that medical professionals should promote health knowledge and skills between one another and between the care team and patients.

The four main ethical principles of medical practitioners are Beneficence, nonmaleficence, autonomy and justice.

2. Objective

The current healthcare environment is characterized by escalating systems and patient complexities. The proliferation of new medical information and technologies,

increased regulatory oversight, an aging population, and heightened consumer awareness and expectations are all affecting the ability to provide coherent care for patients.^[4] The Hippocratic oath is widely one of the most important ethics in the medical field. Medical practitioners swear by this to save lives and be what we know as heroes to the sick. To the core of this is with respect to patients. As life will have it, things are not completely straightforward. All differ according to the circumstance of the case, this poses as the labyrinth and what better way to understand it than through the eyes of the law. Judicial precedence will give an insight into reality when faced with medical suits where ethics drive the force.

This article is an attempt to introspect the relationship between medical ethics and law. Medical ethics have been present from the time of Hippocrates' oath. Modern medicine codes of ethics ensure physicians strive for the highest possible standards of ethical behavior. In this world where modern tools are available for diagnostics at a price where the majority of the Indian population find it unaffordable, decision-making has become difficult. Conclusion Although ethics and law are closely related, they are not the same. Ethical consideration may many times exceed the need of the law especially in health care. It is adherence to ethical principles that help in creating trust between the public and the health professional. However, certain behavior perceived as ethical for few may not be considered in the same manner by others. In the present modern environment, there may be certain challenges for ethical behavior, and perhaps, the law of the land helps in effectively maintaining certain decorum and ensuring minimal trust deficit.

Law and Medical Ethics

"Medical practice is an ethical and legal minefield, so what helps us manage these dilemmas in an effective way? The answer is rarely, the law, but commonly, ethics"

In more recent times, statute and common law has piled many layers of formal legal duties on doctors, but the law has largely reflected long-standing ethical principles. Judges and politicians drive our behaviour at the periphery, but our collective ethical conscience have historically had a much greater impact. The four principles of medical ethics are namely; Autonomy, Beneficence, non-maleficence, justice. The law reflects these principles as follows

Autonomy - Involves Consent, Confidentiality and access to records

Beneficence - Negligence law

Non-maleficence - Criminal law, Negligence law regulation

Justice -

There are three elements to Justice to which the law is concerned about:

Distributive justice - fair distribution of limited healthcare resources

Rights-based justice - respect for people's rights, such as prohibition of discrimination

Legal Justice - respect for the law^[5]

"The moral conscience is a precursor to the development of legal rules for social order"

Brock and Mastroianni, 2013

Ethics has been described as beginning where the law ends. Both share the goal of creating and maintaining social good

(Brock and Mastroianni, 2013) Ethics never stands alone, nor does the law. Medical ethics and law are integral components to ensure that healthcare is provided to the community with care and concern. It provides certain standards for health professionals to discharge the duties with utmost consideration to a suffering human being even as the society receives it with full faith and trust.^[6]

Doctors may have difficult questions to resolve when their legal duties appear to conflict with their perception of ethical responsibilities. The law might seem to require a doctor to behave in a way which conflicts with his or her personal morality or beliefs. It is also possible that the government could pass a statute with which the doctor must comply, but where compliance appears to conflict with her primary responsibility to make the care of her patient her first concern.

In short, there are a series of tensions and discrepancies between what is 'legal' and what is 'ethical'.

There are times when guidance on how to behave ethically demands more of doctors than compliance with the law. The imbalance of power in the doctor-patient relationship means that doctors must not abuse the trust that is placed in them. It would not be unlawful for a doctor to have a sexual relationship with a consenting, adult patient, but it would be unethical. Where the same medical encounter is governed both by the common law and by professional standards and ethical guidance, the profession not infrequently requires more of itself than is required in order to avoid legal challenges. If ethical guidance to doctors could always be relied upon to be more demanding and more detailed than a doctor's legal duties, the relationship between medical law and medical ethics might look quite straightforward. Confusingly, there are times when this weighting is reversed and the law contains a set of rigorous and detailed requirements.^[7]

1. Medical Practice in Nigeria

Medical practice in Nigeria is regulated by the Medical and Dental Practitioners Act, which established the Medical and Dental Council of Nigeria.

The regulation of Physicians and Dental surgeons in Nigeria historically preceded indigenous statutory provisions for such functions. The first allopathic doctors to come in Nigeria were Portuguese. They came in 1472. The Roman Catholic Mission opened a hospital at St. Thomas island off the bight of Benin in 1504.^[8]

General Principles of Medical practice in Nigeria include but are not limited to:

The principal objectives of the medical or dental practitioner shall be the promotion of the health of the patient but in doing so the practitioner shall also be concerned for the common good while at the same time according full respect to the human dignity of the individual

They also have a responsibility in promoting not only individual health but also the general health of the community and in pressing for an equitable allocation of health resources.^[9]

Medical and Dental Practitioners shall try at all times to safeguard the public and the medical and dental professions against incompetent or unethical practitioners and should expose without hesitation professional malpractice and infamous conduct to the Medical and Dental Council of Nigeria.

All communication between the patient and the practitioner made in the course of treatment shall be treated in strict confidence by the practitioner and shall not be divulged unless compelled by law or overriding common good or on consent of the patient.^[10]

The practice of medicine in Nigeria is governed by a comprehensive framework of laws, rules and policies, which includes but is not limited to:

The 1999 Constitution of the Federal Republic of Nigeria (as amended), The Medical and Dental Practitioners Act of 2004, The Criminal Code Act of 2004, The National Health Act of 2014, The HIV/AIDS (Anti-Discrimination) Act 2014, The Compulsory Treatment and Care for Victims of Gunshot Act of 2017, The Rules of Professional Conduct for Medical and Dental Practitioners.

2. Medical and Dental Practitioners Disciplinary Tribunal

The Medical and Dental Practitioners Disciplinary Tribunal has the status of a high court of the Federal Republic of Nigeria and practitioners who appear before it whether as complainants, defendants or witnesses, whether or not they are also represented by a lawyer, must conduct themselves as they would before a high court. This code of behavior is equally applicable to counsel who appear at the Tribunal. Practitioners who make public comments on cases pending before the Medical and Dental Practitioners Investigating Panel or Disciplinary Tribunal, or cases where the time for appeal has not expired, shall be guilty of contempt of the panel or the Tribunal, as the case may be, and shall be liable to appropriate disciplinary action. Any doctor who may wish to contest the judgment can only go to the appeal court.

These legal instruments are further reinforced by institutional mechanisms tasked with overseeing medical practice in the country. Moreover, the legal interpretation of the right to life has extended to encompass the right to health in numerous judicial decisions. This implies that ensuring access to healthcare services and facilities is deemed essential for the preservation of human life. Additionally, the recognition of the right to health within Chapter II of the constitution signifies its growing fondness in Nigerian jurisprudence. As a result, individuals now have the legal means to seek redress if their right to health is infringed upon, reflecting an evolving understanding within the legal system that access to healthcare is not solely a moral or ethical imperative but also a legally enforceable right under the constitution.^[11]

In Nigeria's medical landscape, legal and judicial authorities have established that once a patient is accepted for treatment, a duty of care arises due to the establishment of a doctor-patient fiduciary relationship.

Okonkwo V M.D.P.D.T

The Nigerian Supreme Court recognizes the right to refuse medical treatment in the case under consideration, by discharging Mr. Okonkwo accused of negligent and infamous conduct in a professional respect tried by Medical and Dental Practitioners Disciplinary Tribunal. However, would not the decision of the court run counter to the main responsibility of doctors, to preserve and save life? Beside the law allows a legislation to be made to infringe on the right to religion, dignity and personal liberty, why not to save and preserve life even in the presence of express wishes of a patient if his life can be saved.

FACTS: Mrs. Martha Okorie and her husband belonged to a religious sect known as Jehovah's Witnesses who believe that blood transfusion is against God's injunction. Mrs. Okorie, a 29-year old woman, having had a delivery at a maternity on 29th July, 1991 was admitted as a patient at Kenayo Specialist Hospital for a period of 9 days from 8th August, to 17th August, 1991. she had complained of difficulty in walking and severe pain in the pubic area. At Kenayo hospital the diagnosis disclosed a severe ailment and a day after her admission blood transfusion was recommended. The patient and her husband refused to give their consent to blood transfusion. Dr. Okafor of the hospital consequently discharged the patient, giving her a document to support such. Upon discharge from Kenayo Hospital she was taken to Jenyo Hospital by her husband on 17th August 1991. there he produced to Dr. Okonkwo (the respondent) a card signed by the patient titled "MEDICAL DIRECTIVE/RELEASE"

Dr. Okonkwo having read and understand the implication of the statement admitted the patient without the blood transfusion and as God may have it, the patient died therefrom. Dr. Okonkwo herein the respondent was subjected to trial before the Medical Tribunal for two count charges. First count was about negligence and conducting himself unprofessionally contrary to section 16 of the Medical and Dental Practitioners Act. In the second count he was tried for conducting himself contrary to the famous Oath taking by all medical practitioners, a conduct contrary to the same section 16 of the Act. It was very glaring to him even from the record and the referral letter she came with, where she refused blood transfusion as the only available option to save her life but Okonkwo still accepted her in the same condition and refused to transfer her to a more bigger hospital where the issued directive will not be allowed to operate to the patient's disadvantage, and secondly he allowed his religious sentiment to influence his professional conduct. The tribunal convicted the respondent Dr. Okonkwo for his failure to administer life saving measures despite the outright refusal of the patient.

The question raised was, what shall a medical practitioner do where he is asked not to use any life saving treatment, since the corner stone of all medical practice is consent? The tribunals insist that according to medical code of ethics a medical practitioner shall not allow his religious sentiment to influence his decision to save life and that no matter what he shall strive to save his patient life. The supreme court in affirming the decision of the court of appeal held that although the medical profession is the primary judge of what is infamous conduct, it cannot do so without paying attention to what the law permits of the practitioner or of the patient. The apex court held further that the tribunal failed to respect the constitutional rights to privacy and religion of the patient to object to any form of medical treatment, thereby setting aside the decision of the tribunal finding the respondent of infamous conduct.

1. Principle: Self-Determination and Consent

Patient must give consent to every medical procedure and these rights must be respected by doctors or they may be liable for trespass and battery under common law, because consent is the opening key to every medical practice, failure to obtain it, may lead to an actionable tort. Right to self determination or autonomy, gives an individual power to control the manner, situation and the timing of his death.^[12]

These two rights relates to patient doctor relationship not relating to succession from a particular country to form an independent nation. The right as argued by many scholars include taking one's own life as the highest form of right to self determination (which requires the assistance of an expert like medical personnel), right to choose when and how to die, right to be assisted to die without prosecuting the person who assisted, position contrary to the norms and values of the Nigerian society. Human right shall have universal nature, but not without due regard to the customs of the people. Now assuming the said right shall be allowed to have an absolute play, the peace of our society will be limited. And even from here the above decision of the Apex Court called for concern.

On several occasions doctors face ethical and human right issues regarding the religious belief of Jehovah's Witness. As stated above, they do not believe in blood transfusion and reject it even where it is the only life saving measures. Patient with decision capacity have the right to refuse any medical treatment even if that can lead to death, as ruled by the Supreme Court, and this principle is most pronounced in the case of Jehovah's Witness and several courts decisions affirmed such right to them.^[13]

The complexities faced by the court in this case resolve around navigating the intersection of medical ethics, patient rights, professional conduct, and the legal implications of refusing life-saving treatment due to religious beliefs. The court had to weigh the responsibilities of medical practitioners to act in the best interests of their patients while respecting the rights of patients to refuse treatment, even if it leads to their death.^[14]

Delta state hospitals mgt board & ors v. Onome^[15]

In the case of Delta State Hospitals MGT Board & ORS v Onome, the court of appeal held that "The plaintiff must prove that the defendant owes or owed him a duty of care and was in breach of that duty".

This means that the basic elements for proving negligence in tort exist in medical negligence, comprising:

1. A duty of care owed by the defendant to the plaintiff.
2. A breach of that duty by the defendant;
3. Damage to the plaintiff resulting from the breach

FACTS: Late Mrs. Joseph had on the 4th day of February, 2012 registered at the General Hospital, Otu-Jeremi for antenatal treatment, which she regularly attended at intervals on appointment until the 25th day of November, 2012 when she commenced signs of labour at about 1:20am. We gathered that Mr. Joseph Onome upon rushing his wife, Mrs. Elo Joseph to the General Hospital, Otu-Jeremi discovered to his dismay that there was only one nurse in the entire facility without a Doctor to attend to his said wife. An hour later when Joseph arrived with his wife at the Central Hospital, Ughelli, to his surprise was told by an Houseman on duty at the Obstetrics and Gynecology Ward that members of the Obstetric team on call who were supposed to be on duty at the said Hospital which had two medical consultants and two medical officers had all gone for weekend. The death of Mrs. Elo Joseph and her baby would have been avoided, if members of the Obstetric team on call at the Central Hospital, Ughelli had adequately and professionally responded promptly to the health condition of the late Mrs. Elo Joseph.

1. Principle on Medical Negligence

There are various statutory provisions on medical negligence. For instance, failure to exercise reasonable care

and skill by a medical practitioner is a criminal offence which attracts imprisonment for a term of one year. That medical negligence amounts to infamous conduct in a professional respect is rather too obvious to be subjected to any form of debate. This can be gleaned from Lord Denning's passage referred to in footnote 12. In *Allison v General Medical Council*, infamous conduct in professional respect was defined as:

"Where a medical man in pursuit of his profession has done something with regard to which it would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency."

The burden of proof of proof of medical negligence rests on the claimant who asserts. The burden is discharged when the claimant leads credible evidence to establish the three essential elements of negligence outlined earlier. The court of appeal in this case stated thus:

"The law is also settled that in an action for negligence, the Plaintiff (Claimant) is entitled only to recover on the particulars of negligence pleaded and proved to the satisfaction of the trial Court. Accordingly, it is insufficient and inappropriate for a Claimant to make a blanket allegation of negligence against a Defendant without giving full particulars of the items of negligence relied on as well as the duty of care owed him by the Defendant."

An action for medical negligence is a personal action. Consequently, it is the patient who actually suffered the injury that possesses the requisite locus to file an action against the negligent medical professional and his employer. This general rule is without prejudice to the right of persons under legal disability to maintain an action through their parents/guardian pursuant to the various rules of the court. The next of kin of a deceased person victim may also institute an action for damages of wrongful death as in this case.^[16]

Ojo V Gharoro^[17]

FACTS: Miss Ojo underwent the surgical operation performed by Dr. S. A. Ejide at the hospital. Following the operation, she experienced persistent pain, prompting her to consult the 1st respondent, who advised her to undergo an x-ray. The x-ray revealed a broken needle in her abdomen, necessitating a second operation to address the issue. However, the second operation was unable to completely remove the broken needle.

As a result of the complications arising from the broken needle left in her abdomen, Miss Ojo filed a lawsuit against the medical practitioners involved, claiming special and general damages totaling two million naira for negligence in the manner the surgical procedure was conducted.

After hearing, the learned trial Judge dismissed the appellant's case on the ground that the respondents rebutted the presumption of negligence raised by the appellant. An appeal to the Court of Appeal was also dismissed.

She further appealed to the Supreme Court. The case resolved the issue in favor of the Respondents and held that the respondents rebutted the presumption of the tort of negligence. The court observed that, in a complicated and highly professional case such as this, where the Appellant relies on the doctrine of *res ipsa loquitur*, arising from an abdominal operation, she would have called expert evidence who are surgeons. In the absence of these, the evidence

given by the Appellant cannot match side by side with the evidences given by the witnesses of the respondents.

The court held that, for *res ipsa loquitur* to apply, the event which gave rise to the negligence must tell its own story and it must invariably be a clear and unambiguous story of lack of duty of care. However, in the instant case, the event was a result of an accident which is inevitable and due care was taken by the Respondent to retrieve it but to no avail. In the same vein, the court aligned itself with the words of the great Lord Denning that, every surgical operation involves risks. It would be wrong, and, indeed, bad law, to say that simply a misadventure or mishap occurred, the hospital and the doctors are thereby liable.^[18]

The Code of Medical Ethics in Nigeria provides instances where a medical practitioner can be said to be guilty of medical negligence and such instances could be through an act or an omission. The majority of medical negligence or malpractice cases are not intended, but due to circumstances things could go wrong. Once it is established that another health worker of the same qualification would not have made such a mistake in the same situation then a breach of duty has taken place. Since some of these mistakes can have devastating consequences on the victims, the practitioner needs to be checked by both his professional disciplinary body and the courts.^[19]

Babalola (2013) investigated the Legal Implications of Ethical Breaches in Medical Practice in Nigeria. He underscored the role of medicine in diagnosing, treating, and preventing diseases and injuries, with the overarching goal of enhancing people's quality of life. Despite its significance, Babalola (2013) noted that ethical and legal issues arise in medical practice, risking the profession's integrity and eroding public trust. He outlined potential consequences of ethical and legal breaches, including conviction, damages, suspension, or deregistration. Babalola (2013) stressed the need for practitioners to stay updated with advancements in medical techniques and cautioned against reckless experimentation on patients. He advocated for strict regulatory oversight to prevent negligent practices.^[20]

Professional negligence is defined under Rule 28 of the Rules of Professional Conduct for Medical and Dental Practitioners, also known as the Code of Medical Ethics in Nigeria (2004). These acts include:

1. Failing to provide a patient in need of immediate attention while you have the opportunity.
2. Displaying incompetence in patient assessment.
3. Making a misdiagnosis when clinical signs were evident enough that any reasonably skilled practitioner should have recognized them.
4. Failing to inform or providing incorrect advice about the risks of a treatment or operation, especially if it might cause serious side effects like deformity or organ loss.

Despite the growing importance of patient autonomy in medicine, Nigeria's jurisprudence on disclosure and informed consent in medical care remains underdeveloped. A review of existing case law shows that there is a glaring paucity of judicial decisions that explicitly address the standards and parameter of informed consent in the context of medical treatment. This lack of authoritative guidance not only undermines the ability of healthcare providers to navigate the complexities of informed consent but also

compromises the rights of patients to make autonomous decisions about their own care.^[21]

In the wake of a medical or surgical complication, a patient's perception of his or her medical care will largely depend on what transpired during the informed consent process. A gap in the informed consent process can cause a patient to believe, incorrectly, that he or she received negligent care.

Consider, for example, a patient who undergoes laparoscopic surgery to repair a ventral hernia. The surgery is thought to have gone well, but the next day the patient's symptoms suggest, and computed tomography confirms, that the patient has a perforated bowel. The patient is taken urgently to the operating room for an open procedure to repair the perforation. The patient now faces prolonged hospitalization, higher medical expenses, and additional time off work. If, at the time of the surgery, the patient did not understand that the surgery entailed a risk of bowel perforation, what will the patient make of the situation? From this unexpected adverse outcome, a patient might infer that the surgeon was negligent. The surgeon might attempt to explain that perforation is a recognized risk of the surgery, known to occur even when all appropriate techniques and precautions are used. The patient could cling to the perception of negligence, interpreting the surgeon's explanation as a post hoc attempt to avoid responsibility for the complication. Alternatively, the patient might accept the explanation as true but grow even more frustrated over not being informed of the risk before the surgery. Either way, the patient believes that the surgeon failed him or her.

Esabunor V Tunde Fayewa^[22]

FACTS: The second appellant, the mother of the first appellant, gave birth to her child on April 19, 1997, at the Chevron Clinic in Lagos. The child fell ill within a month, and the second appellant took him to the clinic for urgent treatment. The first respondent found that the child needed blood transfusion, but the second appellant and her husband made it abundantly clear to the 1st Respondent that on no account should their child be given blood transfusion reason being that there were several hazards that follows blood transfusion such as contracting Aids, Hepatitis etc and that as members of the Jehovah witness sect, blood transfusion was forbidden by their Religion. The first respondent remained unyielding, and the Commissioner of Police, Lagos State, moved an Originating Motion *Exparte* before the 5th respondent, seeking relief from the medical authorities of the Clinic of Chevron Nigeria Limited Lekki Peninsula Lagos. The Chief Magistrate delivered a ruling on 12 May 1997, granting the prayer to allow the medical authorities to protect the child's life and health. The first respondent administered the blood transfusion on the same day, and the child recovered and was discharged.

1. Issues for Determination

Whether the Court of Appeal was correct in holding that the 2nd Appellants' refusal to give consent to blood transfusion amounted to an attempt to commit a crime or to allow the 1st Appellant to die.

Whether the learned Justices of the Court of Appeal were correct in holding that the Order of the 5th respondent had overridden the 2nd Appellants' right to give consent to choice of treatment for her infant.

Whether the Court of Appeal was wrong when it held that because the transfused blood cannot be extracted from the 1st Appellant, the matter has become academic.

2. Principle: Right of An Adult to Accept or Refuse Medical Treatment- whether An Adult Has Right to Accept or Refuse Medical Treatment

“It is long settled that an adult who is conscious and in full control of his mental capacity, and of sound mind has the right to either accept or refuse blood (medical treatment).” - PER O. RHODES-VIVOUR, J.S.C.

Fundamental Human Rights, Constitutional law. Right to Freedom of Choice - Instances where the law would step in to protect an individual from abuse of his rights.

“All adults have that liberty of choice. This freedom has been exercised in accordance with the rule of law (see Section 45 (1) (b) of the Constitution). All adults have the inalienable right to make any choice they may decide to make and to assume the consequences. When it involves a child different considerations apply and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect such a person from abuse of his rights as he may grow up and disregard those religious beliefs. It makes no difference if the decision to deny him blood transfusion is made by his parents.

See *M.D.P.D.T. v Okonkwo* (2001) 7NWL (Pt.711) p.206. When a competent parent or one in loco parentis refuses blood transfusion or medical treatment for her child on religious grounds, the Court should step in, consider the baby’s welfare, i.e. saving the life and the best interest of the child, before a decision is taken. These considerations outweigh religious beliefs of the Jehovah Witness Sect.” - PER O. RHODES-VIVOUR, J.S.C. [23]

3. Right to Medical Treatment- Instance Where A Court Would Intervene in A Decision On The Right To Medical Treatment

“It is instructive to note that the law exists primarily to protect life and preserve the fundamental right of its citizens inclusive of infants. The law would not override the decision of a competent mature adult who refuses medical treatment that may prolong his life but would readily intervene in the case of a child who lacks the competence to make decisions for himself. See the case of *Medical And Dental Practitioners Disciplinary Tribunal v. Dr. John Emewulu Nicholas Okonkwo* (2001) 7 NWLR (Pt. 711) 206).

Note also that the Child’s Right Act, LFN 2003 is replete with judicial powers to ascertain the survival and total well-being of the child. Section 13 of the Act provides particularly for the right to health and health Services of the child. Section 13(2) of the Act provides that:

“Every Government, parent, guardian, institution, service, agency, organization or body responsible for the care of a child shall endeavor to provide for the child the best attainable state of health.”

Section 59(a) provides that: “Where it appears to the Court in proceedings in which a question arises as to the welfare of a child, that it may be appropriate for a care supervision order to be made with respect to that child, the Court may direct the appropriate authority to undertake an investigation of the child’s circumstances.” [21]

-PER J.I. OKORO, J.S.C.

Dr. Okekearu V Danjuma Tanko [25]

FACTS: In the course of removing some zinc from his mother’s residence, Tanko injured his left centre finger. He said the wound was not deep. Notwithstanding, the

plaintiff’s neighbors took him to the defendant’s clinic. The defendant without due care and skill negligently amputated that finger, an exercise that permanently disfigured and incapacitated the plaintiff in handling objects. The plaintiff further averred that the defendant refused to surrender the amputated part of the affected finger. He said he reported the matter to the police at Nyanya police station.

The defendant Dr. Rom. Okekearu denied the claim. In a 22 paragraph amended statement of defence, he averred that the plaintiff sustained an injury whilst he and other boys were carrying a poultry pen which fell and crushed the plaintiff’s middle finger. He averred further that when the plaintiff accompanied by neighbours was brought to his clinic, he had the middle finger tied with a piece of cloth which was badly stained with blood. On removal of the cloth blood gushed out of the finger and he discovered that the distal portion of the finger was almost completely severed from the rest of the finger except for a strip of skin which held same together. The bone in the said distal part was broken and the reasonable medical option open to him was to trim off the said strip of skin and stitch the wound. The defendant denied negligence. He averred that there was no need for an x-ray of the said finger, the same having been traumatically amputated partially at the time of the injury. Further that the distal part of the plaintiff’s finger was disposed of in accordance with standard medical practice. [26]

1. Principle: Assault and Battery

“Battery is the intentional not direct application of force to another. Furthermore in battery it is not necessary that there should be any bodily contact between the defendant and the plaintiff. This is sufficient if the defendant directly brings some material object into contact with the plaintiff’s person. The learned authors of *Clerk & Lindsell on Torts 1969* (13th ed.) para. 672 at p. 340 had this to say:

‘An act does not amount to a battery unless it is done either intentionally or negligently’

Learned counsel for the defendant also relied on the cases of *Letang v. Cooper* (1965) 1 Q. B. 426 and *Chief Ray Erivo v. R. I. Obi* (1993) 9 NWLR (Pt. 315) 60 to buttress the submission that if the defendant intentionally applies force to the plaintiff, then the plaintiff has a cause of action in assault and battery. If however he does not inflict injury intentionally but unintentionally, then the plaintiff has no cause of action in trespass.

It was concluded on behalf of the defendant that the act of trimming off the plaintiff’s centre finger of the left hand is not an intentional act of the defendant. It is unintentional. That being so, it was submitted that the tort of battery which is an action in trespass was not made out against the defendant.

In his reply, the plaintiff submitted that the treatment carried out, that is, the amputation of the plaintiff’s left centre finger was an intentional act which the defendant is liable for in battery. It was pointed out that the type of battery in question is a special one which can be committed only by medical men. Reliance was placed on *Clerk & Lindsell on Tort 15 ed. P. 429*. It was said that all that was needed to be proved in this class of battery is, the fact that the doctor failed to obtain consent from the patient before carrying out the operation. Whether consent was obtained or not is a question of fact. It was further pointed out that the two courts below found as a fact that the defendant did not obtain the consent of the plaintiff or his guardian before amputating his finger. [27]

2. The Tort of Battery

Although it is perfectly possible that, as a matter of law, a medical professional who performs treatment upon a mentally competent patient without their consent, could be liable criminally in the law of battery, it is far more usual for actions to be brought either in the tort of negligence or in the tort of battery.^[28]

In terms of battery, it has been suggested that the most appropriate definition of tort in the context of medical law is that a battery has been committed where there has been a “direct act of the defendant which has the effect of causing contact with the body of the plaintiff without the latter’s consent. At the present time, battery is usually brought only for intentional acts”. Therefore, in order for a battery to be established, there must have been direct contact with the patient, without that patient’s consent. The consent, rather than “furnishing a defence” negates the committal of a wrong, because the lack of consent is essential to the wrongful action itself.

Whilst there may be straightforward cases where there has been direct touching, regardless of the apparent seriousness of that touching so that “a pin prick is as much of a battery as major surgery”, there may be cases where although there has been a lack of consent to the actual drug taken, there is not sufficient directness to establish a battery and thus this tort will once again be limited in the extent to which it can protect a patient’s right to autonomy in consenting to medical treatment. This view is supported by other commentators who state, for example, that in a situation where a prescription is written by a doctor without sufficient consent being granted by the patient who still later chooses to have the prescription filled and take the tablets, there would be no battery. This author would observe that in cases such as the latter example, it is difficult to argue that not only is the element of directness missing, but that in reality, there has not been the lack of consent required in order to establish a battery. Although the doctor may have written the prescription without the consent of the patient, the patient appears to have since consented to the ingestion of the tablets and thus the requirements of battery have not been fulfilled.^[29]

Conclusion

The exploration of the Hippocratic Oath and its evolution into modern medical ethics reveals a complex interplay between tradition and contemporary legal frameworks. As society progresses, the relevance of the Hippocratic Oath is increasingly scrutinized, particularly in light of legal and ethical dilemmas faced by healthcare professionals today.

Modern adaptations of the oath, such as the Lasagna Oath, have emerged to address these shortcomings by promoting a more holistic view of patient care that respects individual rights and societal values. These adaptations illustrate the necessity for medical oaths to evolve alongside advancements in medical science and shifts in cultural norms.

Navigating the legal landscape of medicine requires an understanding that the Hippocratic Oath does not provide explicit legal protection against malpractice or ethical violations. Instead, contemporary medical practice is governed by a complex web of laws and regulations that vary by jurisdiction. The lack of direct consequences for violating the oath contrasts sharply with the legal

repercussions that can arise from malpractice suits or breaches of patient confidentiality

The legal factors influencing the medical field are multifaceted, encompassing a range of statutes, ethical dilemmas, and compliance challenges.^[30]

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